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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th January 2011

No. 153—li/1(BH)-19/2005 (pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th October 2010 in I.D. Case No. 1 of 2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of the Executive Engineer (Elct.) CESCO., Dhenkanal Electrical Division, Dhenkanal and its workman Shri Rajendranath Nanda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2006

The 20th October 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of .. First-party—Management
the Executive Engineer (Elect.),
CESCO, Dhenkanal Electrical Division,
Dhenkanal.

And

Its workman Shri Rajendranath Nanda, .. Second-party—Workman
S/o Late Ghanashyam Nanda,
At Lokanathpur, P.O. Bada Swanlo,
Dist. Dhenkanal.

Appearances :

Shri B. Pattanayak, Advocate	.. For the First-party—Management
Shri R. K. Nanda &	.. For the Second-party—Workman
Shri B. Nanda, Advocates.	

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department vide Modification Memo. No. 9188 (5), Dt. 13-10-2009 conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section 10 of the Industrial Disputes Act, 1947 (14 of 1947) for adjudication of the Schedule below :

“Whether the action of the Executive Engineer (Elct.) CESCO, Ltd., Dhenkanal Electrical Division, Dhenkanal in terminating the services of Shri Rajendranath Nanda, Meter Reader of Kamakhyanagar Subdivision, Kamakhyanagar w.e.f. 1-9-2004/ 14-9-2004 by way of refusal of employment is legal and/or justified ? If not, what relief Shri Nanda is entitled to ?”

2. The contents of the statement of claim of the second-party workman stated as follows :

The second-party workman is a retired Military personnel. He being the Military retire person, applied for the post to be considered by the first-party management as per the advertisement in the daily Newspaper “SAMAJ” on Dt. 29-4-2002. He was called for interview on Dt. 9-5-2002 and was selected and got appointment vide Office Letter No. 4563, Dt. 26-6-2002. Subsequently the second-party was engaged for meter reading work by the order of the first-party on Dt. 26-9-2002. While the second-party was performing his duty as such without giving any termination letter, the second-party was verbally released from service on Dt. 15-9-2004. Then he approached the DLO, Dhenkanal for relief and the matter was taken up for conciliation but it was failed. So, the matter was moved to Government and then it was referred to this Court for answering the schedule question. So, the second-party workman prayed for an order that the termination order against him is illegal and he claims his reinstatement along with all the back wages.

3. The first-party management challenged on the claim of the second-party workman stating that there is no such cause of action against the first-party management in as much as no industrial dispute exists between the management and the second-party workman as he was not the workman under the first-party. There was no employer and employee relationship in between the management i.e. the Executive Engineer, Electrical, CESCO, Ltd., Dhenkanal Electrical Division, Dhenkanal and the second-party workman. The management never reduced the employment of the second-party. The second-party was employed by M/s Orange Securitas Private Limited, who is the real employer of the second-party. So, this reference suffers from misjoinder and non-joinder of parties.

4. As per the case of the first-party management it is partially correct that for the purpose of checking illegal abstraction of electricity by way of hooking, taking meter reading and for collection of electric bills from consumers the CESCO, Head Office at Bhubaneswar needed suitable retired and experienced persons. In order to scrutinise the capability, experience and suitability for the purpose an advertisement was made in the news daily ‘The Samaj’, Dt. 29-4-2002 inviting applications from the candidates. Accordingly, interview was conducted. At the time of selection of the candidates in the interview conducted in different phases, all such selected candidates were clearly given to understand that after selection their names would be recommended to M/s Orange Securitas Private Limited, Toshali Complex, Satyanagar, Bhubaneswar, Flat No. B-104, Rupa-4 who in turn would be their appointing authority for all intents and purposes and their conditions of service etc.

should be governed directly by M/s Orange Securitas Private Limited as per the CESCO's norms and that as per the requirement in different divisions of the CESCO, on its request M/s Orange Securitas Private Ltd., as their appointing authority would issue movement order of the personals to different divisions. Accordingly, the names of the suitable persons selected were recommended to M/s Orange Securitas Pvt. Ltd., vide Letter No. 11367, Dt. 28-5-2002 for dehooking/disconnections squad showing the requirement for different divisions. M/s Orange Securitas Pvt. Ltd., duly accepted all the terms and conditions. Requirement for Dhenkanal Electric Division was for 4 squads, each consisting of 5 persons. The second-party workman was appointed by M/s Orange Securitas Private Limited and thereafter he was posted at Dhenkanal Divisional Office along with 19 others. After receipt of the movement order the first-party sent them to different Electrical Subdivisional Offices of the Dhenkanal Electrical Division. The second-party was sent to Kamakhyanagar Subdivision. The personnel of M/s Orange Securitas Pvt. Ltd., including the second-party reported before the concerned S.D.Os. The second-party and all others used to draw their salary from M/s Orange Securitas Pvt. Ltd., as per the attendance statement prepared by the A.S.O. of M/s Orange Securitas Pvt. Ltd.. The second-party used to sign the Acquittance roll and draw his salary.

5. Further it is alleged from the case of the first-party management that vide Letter No. 18714, Dt. 5-9-2002 the S.E. (HR & A) of CESCO Head Office, Bhubaneswar requested M/s Orange Securitas Pvt. Ltd., for diverting 84 numbers of its personnel working in the dehooking/disconnection squad to perform the duty of meter reading/bill distribution etc. in different division and recommended their names for making divisionwise allotment with effect from Dt. 12-9-2002. The name of the second-party was also recommended for the said purposes for Dhenkanal Electrical Division. M/s Orange Securitas Pvt. Ltd., issued a movement order, Dt. 12-9-2002 by posting the second-party along with others as Meter Reader at Dhenkanal Electrical Division. Accordingly the second-party was engaged as Meter Reader in Kamakhyanagar Electrical Subdivision. The second-party also after joining at his new assignment as a Meter Reader used to draw his salary after putting signature in the Acquittance Roll as per the attendance statement prepared by the M/s Orange Securitas Pvt. Ltd.

So the first-party has no role to play as regards the continuance of service or discontinuance from service of the second-party since the second-party was never under the foll of employment of CESCO/first-party. Hence, the first-party management made a prayer for dismissal of this case.

6. The second-party filed rejoinder taking the same plea denying the case of the first-party management. The additional Written Statement filed by the management stating the same plea taken in the written statement. The second-party workman again filed counter to Addl. Written Statement denying the case of the first-party.

7. Out of the pleadings of the parties, the following issues have been framed for adjudication.

ISSUES

- (i) "Whether the action of the Executive Engineer (Elect.) CESCO Ltd., Dhenkanal Electrical Division, Dhenkanal in terminating the services of Shri Rajendranath Nanda, Meter Reader of Kamakhyanagar, Subdivision, Kamakhyanagar with effect from 1-9-2004/14-9-2004 by way of refusal of employment is legal and or justified ?"
- (ii) If not, what reliefs Shri Nanda is entitled to ?"

8. The second-party workman has examined three witnesses including himself. W.W. 1 Rajendranath Nanda (The second-party workman), W.W. 2 Kalandi Charan Nayak, Meter Reader under CESCO, W.W. 3 Bijaya Kumar Hota, Meter Reader of CESCO.

On behalf of the first-party management, three witnesses have been examined. M.W. 1, Susanta Kumar Jena, S.E. (Electrical Circle), Dhenkanal, M.W. 2, Krushna Chandra Pusupalak, S.I. of Police (Spl. Police Officer), M.W. 3, Biraja Prasad Padhi, S.D.O., Electrical, Dhenkanal Electrical Subdivision.

9. The second-party workman has filed documents which are marked Ext. 1 to Ext. 11 whereas the first-party management has filed documents which are marked Ext. A to Ext. J.

FINDINGS

10. *Issue No. i*—The second-party workman challenged on his termination as well as claims his back wages from the first-party management. At this stage the documents filed by both the parties should be placed details. The second-party workman has filed some documents i.e. Ext. 1 the xerox copy of advertisement in daily “Samaj”, Dt. 29-4-2002. Ext. 2 is the xerox copy of call letter, Ext. 3 is the xerox copy of letter, Dt. 26-6-2002 of Executive Engineer, Dhenkanal to S.D.O., Kamakhyanagar. Ext. 4 is the xerox copy of the letter for engagement of Ex-service personnel for meter reading works. Ext. 5 is the xerox copy of attendance register. Ext. 6 is the xerox copy of letter, Dt. 31-5-2004 of Manager, Dhenkanal Electrical Division, Dhenkanal for submission of consumerwise data for billing on average basis. Ext. 7 to Ext. 11 are the xerox copies of letter issued by the D.L.O., Dhenkanal to Executive Engineer, Dhenkanal. Ext. 5/1 is the signature in attendance register.

The management also has filed some documents i.e. Ext. A is the xerox copy of the letter for engagement of 300 numbers of Ex-servicemen for the dehooking/Disconnection addressing to M/s Orange Securitas Pvt. Ltd., Ext. A/1 is the order forming 4 (four) squads for Dhenkanal region attached to Ext. A. Ext. B is the xerox copy of office Order No. 4563, Dt. 26-6-2002 for engagement of Security Personnel to form dehooking squad under different Subdivision. Ext. C is the xerox copy of movement order of M/s Orange Securitas Pvt. Ltd., Dt. 12-9-2002, sent to the Executive Engineer, Dhenkanal. Ext. D is the xerox copy of order No. 7322, Dt. 21-9-2002 of Executive Engineer (Elect.), Dhenkanal Electrical Division to Subdivisional officer (Elect.), Electrical Subdivision, Dhenkanal, Gondia and Kamakhyanagar for engagement of Ex-service personnel for meter reading work. Ext. E is the letter, Dt. 16-11-2004 sent by M/s Orange Securitas Pvt. Ltd., to the workman Rajendranath Nanda by Regd. Post with A.D. Ext. F/1 is the Postal Registered A.D. Ext. F is the payment sheet of June 2004 by M/s Orange Securitas Pvt. Ltd. Ext. F/1 is the signature of the second-party workman Rajendranath Nanda who has signed on the said document. Ext. G is the payment sheet of July 2004. Ext. G/1 is the signature of the second-party workman in Ext. G. Ext. H is the payment sheet of August, 2004, Ext. H/1 is the signature of the workman in Ext. H. Ext. J is the letter, Dt. 1-9-2004 of M/s Orange Securitas Pvt. Ltd.

The second-party workman challenged on his termination as well as claims his back wages from the management. The workman has not filed any statement of claim nor adduced any evidence regarding the dispute referred vide order, Dt. 13-10-2009. The second-party workman closed his evidence and filed a memo stating that the statement of claim adduced earlier should be taken for consideration. It is averred from the case of the second-party workman that the first-party management is his appointing authority. So he raised all his grievances against the first-party management. The second-party workman claims his engagement basing on Section 115 (Estoppel) of the Evidence Act which leads “When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself

and such person or his representative, to deny the truth of that thing". The first-party management has made an advertisement in the daily Newspaper "The Samaj" as per Ext. 1 on Dt. 29-4-2002 and the first-party management required retired Military persons for CESCO to engage them to check the De Hooking, meter reading, billing of electric bill etc. So, the learned advocate on behalf of the workman made a submission that the management is to be estopped to say that he has not made any advertisement to provide employment for his organisation. Moreover, he submitted that first-party cannot deny that he has not called the second-party to attend the interview held on 22-5-2002 from 9-00 A.M. to 1-30 P.M. as per Ext. 2. As per Ext. 3 the management directed the Subdivisional officer (Elect.) Electrical Subdivision, Kamakhyanagar to engage the security personnel to form De Hooking squad under different Subdivision. So, the workman claims that he was engaged by the management. It is further averred from Ext. 3 that the management requested to the Subdivision Officer (Elect.), Electrical Division, Kamakhyanagar "To utilise the squad fully and daily squad movement must be watched and daily progress must be submitted to this office positively in between 10-00 A.M. to 11.00 A.M. Ext. 4 is the letter showing engagement of Ex-service personnel for meter reading works. The learned advocate on behalf of the workman further submitted that the management in his additional written statement state that the M/s Orange Securitas Pvt. Ltd., vide letter , Dt. 1-9-2004 has advised the first-party management to release the second-party from duty with effect to 1-9-2004. So, as per the case of the workman, the management is the employer of the second-party and as the employer, the management has advised the M/s Orange Securitas Pvt. Ltd., to release the second-party.

The workman struck the management on the documents which has been exhibited. Ext. 5/1 is the signature in the attendance register has been marked with objection. The workman stated that the management provided engagement to the workman, fixed the wages structure, allotted duty and watched on his duty by issuing the warranting letter. Ext. 6 is the letter of instruction. Witness M.W. 3 for the management stated that he has not seen any appointment letter of the second-party given by M/s Orange Securitas Pvt. Ltd. Ext. 5 and Ext. 5/1 marked with objection. The learned advocate on behalf of the workman stated that Ext. 5 is available in the office of the management. As the official seal of the said document has not been denied, the management admitted the relevancy of Ext. 5. It is further averred from the case of the workman that the signature of the concerned S.D.O. in the carbon copy of the attendance register Ext. 5/1 is the same signature and the same seal and contents in the xerox copy of Ext. 5 of course, there is some cutting marks in those writings of the document. The management vehemently objected on this point as it is not available in evidence. On perusal of the said document it is clear that Ext. 5 is a xerox photo copy. On close scrutiny it is evident that there is difference in between Ext. 5 and Ext. 5/1. The handwriting in Ext. 5 is not same with Ext. 5/1. The handwriting in Ext. 5 and Ext. 5/1 are not tallied to each other. The words CESCO appears in the second line in Ext. 5 does not appear in the document in Ext. 5/1. The serial number is not marked in Ext. 5/1. Some writings in Ext. 5 does not appeal in Ext. 5/1. In this regard, M.W. 3 for the management stated that no such attendance sheet Ext. 5 is available in their office. It is further alleged from his evidence that he has not prepared Ext. 5 nor he handed over the copy of that documents to the workman. M.W. 3 also stated that it is not the attendance sheet for the month of September, 2004 of Kamakhyanagar Subdivision, Electrical. The signature appears in Ext. 5/1 is not the signature of M.W. 3. It is further stated that he has never put his signature on such document like Ext. 5/1. In this regard, the workman has not disclosed how he got Ext. 5 and the document in Ext. 5/1. So, the management in this respect relied on the reported decision AIR 1998 M.P. 46 and AIR 1976 Orissa 236 "the law is well settled that photo copy is not admissible in evidence. The management also relied upon the decision AIR 1953 Cal. 456-

copies made on carbon paper cannot generally be relied upon for purpose of comparison. The workman has not given evidence regarding Ext. 5/1. Moreover the workman has not examined any other witness to prove such document. In such circumstances, there is no authenticity of Ext. 5 and Ext. 5/1. W.W. 3 only stated that Shri B. Padhi, Assistant Manager of Commerce handed over the xerox copy of the attendance register to the workman. It is evident from his evidence that the said document was handed over to the workman by Shri Jena which contradicts to his earlier statement. So in the circumstances there is no relevance in Ext. 5 and Ext. 5/1.

11. The specific stand of the management is that the second-party workman Rajendranath Nanda was an employee of M/s Orange Securitas Pvt. Ltd., which is an independent Company, awarded with contract to engage personnel. The second-party workman stated in his evidence that the advertisement relates to some temporary posts. He further stated that the xerox copy of Ext. 3 was handed over to him and other security personnels. The second-party in his evidence stated that from the head office situated at Bhubaneswar, he has received the written appointment order in relation to the advertisement Ext. 1. Subsequently, the workman stated that he was taking his monthly salary by putting his signature in the aquittance roll of Orange Securitas Pvt. Ltd., till August 2004. He admitted that he had not intimated in writing to the management that he should be paid by the Division Office but not by the Security agency. He was working under the Assistant Security Officer Krushna Chandra Puspakal (M.W. 2). The W.W. 2 Kalandi Charan Nayak, Meter Reader under CESCO corroborated the evidence of W.W. 1 (the second-party) and stated that some Sahu was the Assistant Security Officer of Orange Securitas Pvt. Ltd., who after bringing salary from Division Office used to disburse among them in other month and they put their signature in the aquittance roll of Orange Securitas Pvt. Ltd., and received the wages every month. M.W. 2 only stated that "prior to his present assignment he was attached to M/s Orange Securitas Pvt. Ltd., and Assistant Security Officer and from 3-6-2004 to 6-9-2004 he was attached to Kamakhyanagar Electrical Subdivision as Assistant Security Officer of M/s Orange Securitas Pvt. Ltd. The workman was an employee of M/s Orange Securitas Pvt. Ltd., and was taking meter reading of consumer of CESCO. M.W. 2 and the second-party workman were receiving their salary from M/s Orange Securitas Pvt. Ltd. As A. S. O. of M/s Orange Securitas Pvt. Ltd., M.W. 2 was scrutinising his (The second-party workman) performance. This part of evidence of M.W. 2 corroborates the evidence of second-party workman as well as W.W. 2. M.W. 1 was working as Executive Engineer of Dhenkanal Electrical Division from 12-4-2002 to 22-4-2003. During his incumbency as Executive Engineer there was some appointment of persons to check De Hookng. As alleged from his evidence they had appointed M/s Orange Securitas Pvt. Ltd., for the said purpose and some employees appointed by that agency to check De Hookng process. CESCO Headquarters at Bhubaneswar had appointed that agency. M.W. 1 had intimated officially to the S. D. O., Kamakhyanagar Subdivision. Ext. B is the xerox copy of that letter. Subsequently some employees of the squad have been entrusted the work of meter reading and bill distribution. By that time the second-party workman remained in Kamakhyanagar Subdivision jurisdiction. The above arrangement was done by CESCO Headquarter office and the security agency named above has issued the work order for the post of Meter Reader. Ext. C is that letter. He has further stated that he has never given the salary to the workman nor taken his attendance. None of the employees of the Security agency are absorbed in their office concerned and they are purely the employees of M/s Orange Securitas Pvt. Ltd. He (M.W. 1) simply issued the placement order of the personnels. It is further clear that the attendance sheet is being prepared by the Assistant Security Officer of the Security Agency and he (M.W. 1) simply countersigned it.

12. The second-party workman relied on Ext. 1 to Ext. 4. He admitted that he has not received any appointment order relating to the advertisement Ext. 1 and Ext. 2. There is nothing in Ext. 3 and Ext. 4 regarding terms and conditions of any appointment against any post. So as per the reported decision 1998 (II) ILJ 1067 (SC) “ a selection pursuant to advertisement does not give any right to a workman for appointment. As per Ext. A the letter No. 11367, Dt. 28-5-2002 CESCO issued to the M/s Orange Securitas Pvt. Ltd., for engagement of 300 numbers of exserviceman for dehooking/ Disconnection squad. Ext. C is the movement order. Ext. F, G and H disclose that the workman by putting his signature has drawn his salary in the month June, July and August respectively. Ext. J is the released order, Dt. 1-9-2004 by M/s Orange Securitas Pvt. Ltd. In view of such facts and circumstances it is evident that the second-party is a workman under M/s Orange Securitas Pvt. Ltd., and he was getting his salary from M/s Orange Securitas Pvt. Ltd. The second-party has not filed any document relating to his salary as he has drawn from the management. The management relied on the reported decision AIR 2002 (SC) 1147. In absence of receipt of proof of salary or wages or record of appointment, filing of affidavit is not sufficient proof that the workman had worked under the management.

13. The workman raised the point about the change of his service condition in violation of Section 9A of the Industrial Disputes Act and unfair labour practice which he has not pleaded nor filed any document to this effect. It is evident from the document as well as evidence on record that the workman was getting wages from M/s Orange Securitas Pvt. Ltd., and he had never raised any question before the management at any time regarding receipt of wages from the M/s Orange Securitas Pvt. Ltd. M.W. 2 and M.W. 3 categorically and cogently stated that the second-party was the workman undr M/s Orange Securitas Pvt. Ltd., and he was drawing his salary from the said agency.

The learned advocate on behalf of the management has submitted that Rule 10 B of the Orissa Industrial Disputes Rules 1959 prescribes the procedure to be followed by the Labour Court and Industrial Tribunal while adjudicating the industrial disputes. As per the above rules, the party raising the dispute shall file a statement of claim with document and list of witnesses in the Court within 15 days of receipt of order of reference with serving copy to the Opposite Party. In the instant case, the Opposite Party has filed written statement along with the documents. But the second-party has not filed the statement of claim nor adduced any evidence although he was advised by the order of reference Dt. 13-10-2009. The learned advocate on behalf of the second-party submitted that the workman does not like to file further statement of claim after the modified reference and he is relying on the statement of claim and documents which he has filed previously. The contents of the modified reference relates to whether the action of the Executive Engineer (Elect.) CESCO Ltd., Dhenkanal Electrical Division, Dhenkanal in terminating the services of Shri Rajendranath Nanda, Meter Reader, Kamakhyanagar Electrical Subdivision, Kamakhyanagar with effect from 1-9-2004/14-9-2004 by way of refusal of employment is legal and/or justified ? But as per the statement of claim “The second-party had performed his duty and responsibility to the satisfaction of the Employer concerned till the date of his illegal termination on Dt. 1-9-2004”. It is also averred in the statement of claim that “without assigning any reason and without giving any termination letter, the second-party was verbally released from service on 15-9-2004”. In the rejoinder the second-party stated that on 15-9-2004 he was disallowed verbally to work without assigning any reason and without any order of termination. The second-party (W.W. 1) in his examination in Chief has stated “He had performed his duty till the 14th September 2004 (14-9-2004) and on the 15th September 2004, the authority did not allow him to work and he was verbally told that he was no more in service”. The workman neither pleaded nor given any evidence to the effect that he was

disallowed to work on 14-9-2004. He has not stated that the refusal of employment i.e. on Dt. 14-9-2004 which is totally contradicts the reference. He has also given the inconsistent statement about the refusal of employment. So as per the decision 1999 (I) LLJ 1028 (SC) the inconsistent statement cannot be relied upon. Accordingly the issue No. i is answered.

14. *Issue No. ii*—In view of such facts and circumstances it can be said that there is no employer and employee relationship in between the management and second-party. From the documents and entire evidence on record it is evident that the second-party is an employee of M/s Orange Securitas Pvt. Ltd. The management relied on the decision AIR 2005 (SC) 768 and 2008 Supp 1 DLR 405—where the employee has neither pleaded nor shown that he was not gainfully employed after termination from service, he is not entitled to get back wages. Admittedly, the second-party is not pleaded nor stated in his evidence that he was gainfully employed after the termination. In view of the facts and circumstances it can be said that the second-party was working under M/s Orange Securitas Pvt. Ltd., and he was also terminated by the said agency. The management is not entangled in relation to the termination of service of the second-party workman in any way. Hence the workman is not entitled to get any relief. Accordingly, issue No. ii is answered.

AWARD

Hence, in view of the aforesaid finding, it is ordered that the reference is dismissed on contest but in the circumstances without any cost. The workman is not entitled to get any relief in this case. The reference is answered accordingly.

Dictated and corrected by me.

SAROJINI MAHAPATRA
20-10-2010
Presiding Officer
Labour Court, Sambalpur

SAROJINI MAHAPATRA
20-10-2010
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
P. K. PANDA
Under-Secretary to Government